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July 27, 2015

VIA ECF

Honorable P. Kevin Castel
United States District Judge
United States District Court
for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Courtroom 12C
New York, NY 10007

Re: *Gucci America, Inc. v. Alibaba Group Holding, Ltd.*, 1:14-cv-05119 (PKC);
Gucci America, Inc. v. Alibaba Group Holding, Ltd., 1:15-cv-03784 (PKC)

Dear Judge Castel:

I write on behalf of the Alibaba Defendants, who are parties to No. 1:15-cv-03784 (PKC), which Your Honor accepted as related to No. 1:14-cv-05119 (PKC) on July 7, 2015. Although, as the Court knows, the Alibaba Defendants are no longer parties to No. 1:14-cv-05119 (PKC), having been voluntarily dismissed from the action in July 2014 (*see* Dkt. 7), the interests of the Alibaba Defendants are implicated by plaintiffs' motion for a default judgment against the Merchant Defendants in No. 1:14-cv-05119 (PKC). *See* Dkts. 34-38.

Specifically, among the causes of action on which plaintiffs move for entry of a default judgment are violation of RICO, 18 U.S.C. § 1962(c), and conspiracy to violate RICO, 18 U.S.C. § 1962(d). *See* Dkt. 34-1 at 4; Dkt. 35 at 17-22. As plaintiffs state in their memorandum of law, "The Complaint describes in detail how the Merchant Defendants have participated in the operation and management of an association-in-fact enterprise (*with the Alibaba Defendants* and unidentified co-conspirators), whose purpose was to sell and profit from the sale of Counterfeit Products." Dkt. 35 at 18 (emphasis added). Plaintiffs also note (correctly) that "the Alibaba Defendants are likely to dispute the existence of a RICO conspiracy and enterprise between themselves and the Merchant Defendants" *Id.* at 22.

Pursuant to the process established by the Court at last week's initial conference, the Alibaba Defendants will, in our pre-motion letter to be submitted on August 6th, formally advise the Court and

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plaintiffs of their intention to move to dismiss, *inter alia*, the RICO and RICO conspiracy claims that have been reasserted in substantially identical form in the action to which the Alibaba Defendants are parties. The purpose of this letter is to advise the Court as to the Alibaba Defendants' concern that their interests not be prejudiced by entry of a default judgment against the Merchant Defendants that is predicated, in part, on what we believe to be deficiently pled RICO and RICO conspiracy claims relating to an alleged conspiracy – substantially similar in nature to that alleged in No. 1:15-cv-03784 (PKC) – in which the Alibaba Defendants purportedly participated. Of equal concern, placing the Court's imprimatur on these RICO claims by entry of the requested default judgment would unfairly invite the inference of complicity in such activities by the Alibaba Defendants – which of course remains factually and legally unproven.

In these circumstances, we respectfully ask that the Court adopt one of the alternative approaches identified by plaintiffs in their moving papers: defer ruling on the default motion to the extent it is based on the RICO and RICO conspiracy claims until the resolution of No. 1:15-cv-03784 (PKC) or, should the Alibaba Defendants' motion to dismiss such claims succeed, following the disposition of that motion. *See* Dkt. 35 at 22 (“In the Alternative, the Court May Decide These Issues upon Resolution of the Renewed Action”) (capitalization altered).

We thank the Court for its consideration of this matter and stand prepared to brief the issues posed by this letter more formally should the Court desire.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "R. Bruce Rich", with a stylized, flowing script.

R. Bruce Rich

cc: Robert Weigel, Esq. (counsel for plaintiffs)